

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 348 of 1999

in

MISC.CIVIL APPLICATION No 1308 of 1998

with

CIVIL APPLICATION NO. 2342 OF 1999.

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SHANTABEN RATILAL MAHAVANSHI

Versus

ADMINISTRATIVE OFFICER

Appearance:

MR SM MAZGAONKAR for Appellants

MR MC SHAH for Respondent No. 1

M/S PATEL ADVOCATES for Respondent No. 3 (absent)

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE C.K.BUCH

Date of decision: 05/08/1999

ORAL JUDGEMENT

This appeal is filed against rejection of MCA No. 1308 of 1998 in Special Civil Application No. 1074 of 1987.

The appellants were the original petitioners. Being aggrieved and dissatisfied with the action of non granting certain benefits such as GPF, pension scheme etc., they approached this Court by filing Special Civil Application No. 1074 of 1987. In the said petition, Rule was issued and it was pending for final hearing. It appears that when the matter was placed for final hearing before the learned Single Judge and on December 9, 1997, a statement was made by the learned counsel for Respondent No.3 of the petition (respondent No.3 in the petition was also State of Gujarat) that the grievances made by the petitioners in the SCA had been taken up by respondent No.3 for consideration on merits and appropriate decision would be taken within reasonable time. At that time, it was submitted by the learned counsel for the petitioners that he had no objection in case the grievances made by the petitioners would be taken up for decision by respondent No.3, but the court may give a time bound programme so that the matter which was already delayed may not be much more delayed. In the light of the aforesaid statement on behalf of respondent No. 3 and submissions on behalf of the petitioners, in para 2 of the order, the learned Single Judge issued the following directions:

"In view of the facts aforesaid, the respondent No.3 is directed to consider and decide the grievance made by petitioners in this Special Civil Application within a period of three months from the date of receipt of writ of this order. In case the grievances of the petitioners made in this Special Civil Application are accepted by respondent No.3 then they shall be entitled for all consequential benefits following therefrom and the same shall be given to them within two months next. However, in case the grievances of the petitioners are not acceptable, then the respondent No.3 may pass a reasoned order and a copy of the same may be sent to the petitioners by registered post A.D. Liberty is granted to the petitioners for revival of this Special Civil Application in case of difficulty."

Accordingly, Special Civil Application was disposed of with no order as to costs.

It was the case of the petitioners that thereafter an application was made by them and the Director of Primary Education afforded an opportunity of hearing to the petitioners but by an order dated March 30, 1998, the claim put forward by the petitioners was rejected. It was submitted that the claim ought not to have been rejected on the ground mentioned in the rejection of representation. We may, however, state that we are not expressing any opinion on the correctness or otherwise of the said order passed by the Director of Primary Education on March 30, 1998. Be that as it may, in the light of the order passed by the learned Single Judge by which the petitioners were permitted to get the petition revived, MCA No.1308 of 1998 in Special Civil Application No. 1074 of 1987 was filed by the petitioners. It is the case of the appellants-petitioners that when the said MCA came up for hearing before the learned Single Judge, attention of the Court was drawn that being aggrieved by the action taken by the Director of Primary Education, Nagar Prathmik Shikshan Samiti, Navsari had also filed a petition being Special Civil Application No. 5364 of 1998 and it was pending. It was stated that the learned Single Judge, in the light of the fact that Nagar Prathmik Shikshan Samiti, Navsari had also filed a petition, dismissed the MCA on the ground that it was not necessary to revive the petition as Nagar Prathmik Shikshan Samiti, Navsari has also challenged the Government action and that petition will be decided by the Court.

Being aggrieved by the order rejecting MCA and non-revival of Special Civil Application No. 1074 of 1987, the present LPA is filed.

Ordinarily, this court would insist for impugned order which is challenged in the LPA. Hence, when the matter was called out for hearing, we asked Mr. Majgaonkar for the appellants to produce a copy of the order impugned in the present LPA which was passed in MCA No. 1308 of 1998. He, however, stated that neither a copy of the order passed by the learned Single Judge nor papers of the said matter are available. He also produced a copy which he has got from the computer inquiry counter, Annexure 'H' to LPA in which it was specifically mentioned that MCA was disposed of on August 28, 1998 and in the subject column, an endorsement is made "Not

available".

In the light of the said statement, on May 7, 1999, we admitted LPA and fixed it for final hearing on July 19, 1999. In LPA, appearance of Mr. M.C.Shah is shown for respondent Nos. 1 and 2. He is not present. It was, however, stated by Mr. Majgaonkar that Mr. Shah is appearing for Prathmik Nagar Shikshan Samiti which is supporting the appellants and it is also stated that Special Civil Application No. 5364 of 1998 filed by the Samiti is pending before learned Single Judge.

So far as respondent No.3- State of Gujarat is concerned, appearance of Patel Advocates is shown but nobody is present for respondent No.3. In Civil Application No. 2342 of 1999, Rule is served to all the opponents.

From the facts stated hereinabove, it is clear that the appellants were aggrieved by the decision taken by the State Government. In 1987 itself, SCA No. 1074 of 1987 was filed and it was disposed of on the basis of the statement made on behalf of the State Government. A representation was made which was rejected by the State Government. In the light of the observations made by the learned Single Judge, the appellants-petitioners filed MCA for revival of the petition which was dismissed by the learned Single Judge. According to the learned Single Judge, since Nagar Prathmik Shikshan Samiti had also filed a petition, it was not necessary for the appellants to get the petition revived. Submission of Mr. Majgaonkar is that in fact, the appellants are the employees who are aggrieved and would be adversely affected and, therefore, they had filed MCA for revival of the petition in the light of liberty granted by the learned Single Judge.

We see considerable force in the argument of the learned counsel for the appellants. We, therefore, hold that in the facts and circumstances of the case, the learned Single Judge ought to have granted MCA and ought to have permitted revival of SCA.

For the foregoing reasons, in our opinion, the learned Single Judge has committed error of law in rejecting MCA No. 1308 of 1998. We, therefore, set aside the order passed in MCA No.1308 of 1998 and allow LPA by granting request of the appellants to revive Special Civil Application No. 1074 of 1987. Office will now place Special Civil Application No. 1074 of 1987 before appropriate court taking up such matters along with Special Civil Application No. 5364 of 1998. It was

stated that papers of Special Civil Application No. 1074 of 1987 are also not available. If it is so, learned counsel for the appellants will give additional set and the office will place the said set along with papers of Special Civil Application No. 5364 of 1998 for deciding the same in accordance with law.

We may state that we are not expressing any opinion on merits of the matter and as and when both the matters will be taken up for hearing by the learned Single Judge, they will be decided on their own merits being in any way influenced by the observations made by us hereinabove.

LPA is accordingly allowed. No order as to costs. No order on Civil Application.

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